

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

**RESPONSE OF PLAINTIFFS TO BURNETT'S REASSERTED MOTIONS TO
DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(2) AND 12(b)(6)**

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Defendants Malvern C. Burnett, The Law Offices of Malvern C. Burnett, A.P.C., and Gulf Coast Immigration Law Center, L.L.C. (collectively “Burnett”) have moved to reassert all Motions to Dismiss as against Burnett under Fed. R. Civ. P. 12(b)(2) for alleged lack of personal jurisdiction, and under Fed. R. Civ. P. 12(b)(6) for alleged failure to state a claim (ECF Doc. No. 69). Burnett moved to reassert these motions following this Court’s Order, dated January 16, 2014 (ECF Doc. No. 67), denying as moot all Motions to Dismiss filed by Burnett due to the filing of Plaintiffs’ Second Amended Complaint (ECF Doc. No. 64).

As Burnett has offered no new allegations or arguments in support of these Motions to Dismiss, Plaintiffs hereby respectfully reassert all Responses and Sur-Replies in Opposition to Burnett’s reasserted Motions to Dismiss. Specifically, Plaintiffs wholly adopt and reassert:¹ (1) the Response of Plaintiffs to Burnett’s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2) (ECF Doc. No. 44); (2) the Response of Plaintiffs to Burnett’s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (ECF Doc. No. 47); (3) Plaintiffs’ Sur-Reply in Opposition to Burnett’s Rule 12(b)(2) Motion (ECF Doc. No. 56); and (4) Plaintiffs’ Sur-Reply in Opposition to Burnett’s Rule 12(b)(6) Motion (ECF Doc. No. 57).

For the reasons outlined in Plaintiffs’ reasserted Responses and Sur-Replies in Opposition, Plaintiffs respectfully request that Burnett’s reasserted Motions to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6) be denied in their entirety.

¹ To the extent that Plaintiffs’ Response (ECF Doc. No. 47) and Sur-Reply in Opposition (ECF Doc. No. 57) to Burnett’s Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) for alleged failure to state a claim rely upon the August 28, 2013 Order by Judge Morgan (attached hereto as Exhibit 1), which granted the *David v. Signal International, LLC, et al.* plaintiffs’ motion tolling the relevant “state law tort and contract claims,” Plaintiffs acknowledge that a subsequent order by Judge Morgan dated October 14, 2013 (attached hereto as Exhibit 2), granted Burnett’s Motion for Reconsideration of the tolling order and provided that only the federal claims were tolled. Plaintiffs submit that this October 14, 2013 Order by Judge Morgan does not affect the previous order, and independently sufficient arguments and authority submitted by Plaintiffs for the proposition that the state law claims in this case were tolled while the class action was pending.

DATED: February 10, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2014, I electronically filed the foregoing **RESPONSE OF PLAINTIFFS TO BURNETT'S REASSERTED MOTIONS TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(2) AND 12(b)(6)** with the Clerk of the Court using the ECF system, which sent notification of an electronic filing to all CM/ECF participants.

I further certify that on February 10, 2014, I served a true and correct copy of the foregoing document upon the below-named Defendants by depositing a copy of same in the U.S. Mail, with sufficient postage thereon to insure delivery, and properly addressed as follows:

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I further certify that on February 10, 2014, I served a true and correct copy of the foregoing document upon the below named Defendants by forwarding a copy to them via International Mail, with sufficient postage thereon to insure delivery, and properly addressed as follows:

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